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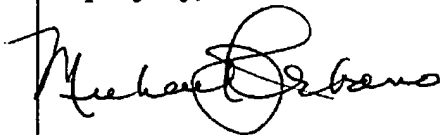
MAY 12 2006

Date: May 12, 2006	No. Pages (incl. cover): 6
To: Examiner Shih Chao Chen	From: Michael J. Urbano Intellectual Property Attorney
Location: USPTO (GAU 2821)	Location: 1445 Princeton Drive Bethlehem, PA 18017-9166
Phone No: (571) 272-1819	Phone No.: 610-691-7710 Fax No: 610-691-8434
Fax No: (571) 273-8300	Subject: Application SN 09/915,963 Peterson 18

**SPECIAL ATTENTION
REQUEST FOR WITHDRAWAL OF FINAL REJECTION**

Attached is a request for reconsideration and withdrawal of the final rejection in the above-identified patent application.

Respectfully,



Michael J. Urbano
Attorney for Applicant(s)

Cc: M. I. Finston, Esq.

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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Patent Application

Inventors(s): George Earl Peterson Case: 18
Serial No.: 09/915,963 Filing Date: July 26, 2001
Examiner: Shih Chao Chen Group Art Unit: 2821
Title: Broadband Polling Structure

THE COMMISSIONER OF PATENTS AND TRADEMARKS
ALEXANDRIA, VA 22313-1450

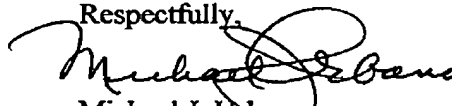
SIR:

Enclosed is Request for Withdrawal of Final Rejection in the above-identified application.

NO ADDITIONAL FEE IS REQUIRED.

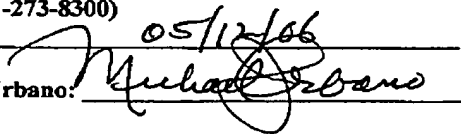
In the event of any non-payment or improper payment of a required fee, the Commissioner is authorized to charge or to credit my VISA as required to correct the error.

Respectfully,


Michael J. Urbano
Attorney for Applicant(s)
Reg. No. 24, 522
610-691-7710Date: 05/12/06Certificate of TransmissionI hereby certify that this amendment is being facsimile
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Michael J. Urbano:

05/12/06


Peterson 18
Serial No. 09/915,963

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Patent Application

Inventors(s): George Earl Peterson **Case:** 18
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**THE COMMISSIONER OF PATENTS AND TRADEMARKS
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SIR:

REQUEST FOR WITHDRAWAL OF FINAL REJECTION
PURSUANT TO MPEP 706.07(d)

In response to the final Office action of March 20, 2006, Applicant respectfully requests that the Examiner reconsider the finality of the action pursuant to MPEP 706.07(d); that is, Applicant respectfully requests that the Examiner withdraw the final Office action and issue instead a non-final first Office action.

Prosecution History Relevant to the Kraus Reference

- (1) **Phase Velocity Feature:** Applicant's antenna structure includes the following feature: at least one antenna element "comprises a traveling wave antenna supporting a phase velocity greater than the speed of light." This feature was recited in dependent claims 2 and 12 as filed in the original application on July 26, 2001. However, independent claims 1 and 11 have been rewritten to incorporate the limitations of claims 2 and 12, respectively. Accordingly, claims 2 and 12 have been canceled. In essence, therefore, amended claims 1 and 11 are nothing more than original claims 2 and 12 rewritten in independent form.
- (2) **Office Action of April 18, 2002:** In this first Office action claims 2 and 12 were

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- rejected under Section 112, second paragraph, as being indefinite *Neither claim 2 nor claim 12 was rejected under Section 102 or 103 in view of any prior art.*
- (3) **Response of July 11, 2002:** In this response Applicant's traversed the Section 112 rejection of claims 2 and 12. Inter alia, Applicant cited Kraus [i.e., J. D. Kraus, "Antennas," McGraw Hill, Inc., New York (2nd Ed. 1988), pp. 759-760] to demonstrate that it is well known to those skilled in the art that certain antennas (e.g., fast wave antennas) do indeed have a phase velocity greater than the speed of light.
- (4) **First Final Office Action of September 26, 2002:** In this Office action the Examiner dropped the aforesaid Section 112, second paragraph, rejection of claims 2 and 12 and, for the first time, rejected claims 2 and 12 under Section 102 in view of Wicks.
- (5) **First Appeal Brief of March 14, 2003:** Applicant's filed their first appeal brief.
- (6) **Office Action Reopening Prosecution on May 28, 2003:** In this Office action the Examiner reopened prosecution and, inter alia, rejected claims 2 and 12 under Section 112, first paragraph, for lack of enablement. *Neither claim 2 nor claim 12 was rejected under Section 102 or 103 in view of any prior art.*
- (7) **Response of September 10, 2003:** In this response Applicant traversed the Section 112, first paragraph, rejection, citing "mathpages", "Kraus" and "Jefimenco" in support of the proposition that it is well known to those skilled in the art that a phase velocity of greater than the speed of light does not violate any principles of physics.
- (8) **Second Final Office Action of November 19, 2003:** In this Office action the Examiner issued a final rejection, repeating the Section 112, first paragraph, rejection of claims 2 and 12. *Neither claim 2 nor claim 12 was rejected under Section 102 or 103 in view of any prior art.*
- (9) **Second Appeal Brief of April 14, 2004:** Applicant's filed their second appeal brief.
- (10) **Examiner's Answer of August 4, 2004:** The Examiner repeated the Section 112, first paragraph, rejection of claims 2 and 12, as well as Section 102 and 103 rejections of other claims. *However, neither claim 2 nor claim 12 was rejected under Section 102 or 103 in view of any prior art.*
- (11) **Decision in Appeal 2005-2760:** The Board reversed the Examiner's Section 112, first paragraph, rejection of claims 2 and 12. However, notwithstanding that the Kraus

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reference, as well as the Wicks and Ogot references, were before the Board, they did not invoke their jurisdiction to reject claim 2 or claim 12 under Section 102 or 103.

- (12) **Amendment of November 28, 2005 Under 37 CFR § 41.50(b):** In this amendment Applicant requested that prosecution be reopened pursuant to 37 CFR § 41.50(b). The amendment included the aforementioned changes to claims 1 and 11 incorporating the limitations of claims 2 and 12, which accordingly were canceled. For consistency, a similar amendment was made to claim 21.
- (13) **Final Rejection of March 20, 2006:** In this Office action (the first Office action after the Board's decision) the Examiner rejected claims 1, 3, 5-11, 13, 15-21 and 23-25 under 35 USC 103(a) as being unpatentable over Wicks in view of Ogot and Kraus. The Examiner made the action Final. This Final action was the first time that claims 2 and 12 (i.e., claims 1 and 11, as amended to incorporate the limitations of claims 2 and 12, respectively) had ever been rejected under Section 103 based on prior art that included Kraus. The Examiner gave no reasons in support of making this first action final.

Reasons Justifying Withdrawal of the Final Rejection

- (1) **Lack of Due Process:** Applicant has been denied due process because the final rejection was based, in part, on a newly applied reference (Kraus) and a new combination of references (Wicks, Ogot and Kraus). Significantly, Applicant has not had at least one opportunity to traverse the Examiner's newly articulated position under Section 103. See, I. H. Donner, "Patent Prosecution," BNA, Washington, DC (3rd Ed. 2003), p. 117.
- (2) **Kraus Never Before Cited or Applied by Examiner:** Notwithstanding that the Examiner has been aware of Kraus since it was first cited by Applicant in his response dated July 11, 2002, he waited nearly four years until prosecution was reopened on March 20, 2006 to apply it for the first time. The Examiner had many opportunities to apply Kraus under Section 103 in such a way that Applicant's would have had a full and fair opportunity to know the Examiner's position and to submit arguments traversing that position. For example, the Examiner could have applied Kraus in the Office action of September 26, 2002. He did not. The Examiner could have applied Kraus in the

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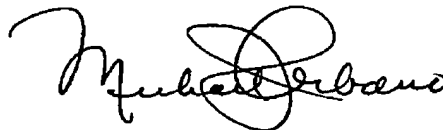
Office action of May 28, 2003, which followed the Office's decision to withdraw the application from the first-filed appeal. He did not. The Examiner could have applied Kraus in the Office action of November 19, 2003. He did not. Finally, the Board in its wisdom did not cite Kraus against either claim 2 or claim 12 under Section 102 or 103.

- (3) **Original Subject Matter:** Moreover, it cannot fairly be argued that Applicant's amendments to the claims necessitated the new grounds for rejection because the substance of the amendments ("a traveling wave antenna supporting a phase velocity greater than the speed of light") is *original subject matter*; that is, it has been present in claims 2 and 12 since the filing date of the instant application. Donner, *supra*.

Conclusion

In view of the foregoing, reconsideration and withdrawal of the final rejection of claims 1, 3, 5-11, 13, 15-21 and 23-25, is hereby respectfully requested. If during the consideration of this paper, the Commissioner believes that resolution of the issues raised will be facilitated by further discussion, he is urged to contact the undersigned attorney at 610-691-7710 (voice) or 610-691-8434 (fax).

Respectfully,
George Earl Peterson



By _____
Michael J. Urbano
Attorney for Applicant
Reg. No. 24,522
610-691-7710

Date: 05/12/06